

**United States Department of the Interior
Bureau of Land Management
Vale District Office
Malheur Resource Area
Vale, Oregon**

**NOTICE OF FIELD MANAGER'S FINAL DECISION
Bendire Fire Emergency Stabilization Plan**

Background

The Bendire Complex was ignited by lightning on Monday, August 10, 2015. The fire began as two small fires, Pole Gulch (450 acres) and Bully Creek (45 acres). On Tuesday, August 11, 2015, the two fires grew together forming one fire and became the Bendire Complex and totaled 49,628 acres. Weather at the time of ignition was hot and dry with temperatures in the area ranging from the mid-80s to 100-degrees Fahrenheit since August 1, 2015 with no measureable precipitation over the month prior.

An Interdisciplinary Team (IDT) from the Vale District BLM prepared the Bendire Emergency Stabilization and Rehabilitation Plan (ESR Plan) to submit to the BLM Washington Office (WO) for funding approval. This plan included all of the proposed emergency stabilization treatments for the Bendire Fire burned area that needed to be analyzed.

After coordination and consultation with over 80 interested parties, Tribes and Elected Officials, the Vale BLM issued a final decision on October 26, 2016, which authorized immediate implementation of certain portions of proposed actions contained within the Bendire ESR plan. On November 21, 2015, the BLM's decision was appealed to the Interior Board of Land Appeals (IBLA). At the BLM's request, on January 5, 2016, the IBLA vacated and remanded the BLM's decision to the agency for further consideration.

Between January 22, 2016, and February 5, 2016, the Vale BLM sought public comment on a revised set of ESR treatments, limiting them to the original proposed actions minus treatments for invasive grasses. During the comment period, BLM received one set of comments from Blue Mountain Biodiversity Project (BMBP) that included their concerns related to herbicide use on public lands. BMBP requested that BLM further analyze the effects of any potential herbicide application. Due to the emergency nature and time sensitivity needed for implementation of the stabilization and rehabilitation efforts listed below, BLM has withdrawn any herbicide treatments from the proposed actions listed below and will further analyze those at a later time.

Through an inter-disciplinary team Determination of NEPA Adequacy (DNA) review process, Vale BLM has determined that the authorized ESR actions identified and described herein are substantially similar to those actions analyzed in existing NEPA analyses and additional NEPA consideration is not necessary.

Legal Authorities and Regulatory Compliance

An ESR Plan was prepared under the guidance of, and is consistent with, the Burned Area Emergency Stabilization and Rehabilitation (ESR) Handbook H-1742-1. After receipt of written public comments for certain proposed ESR actions, the BLM decided to withdraw any herbicide treatments to analyze at a later time. The BLM has compared the revised non-herbicide ESR actions with existing NEPA analysis and has determined that they are adequately analyzed in the following NEPA documents:

- 2005 Vale District Normal Emergency Stabilization and Rehabilitation Plan (NFESRP) Environmental Assessment (EA) # OR-030-05-005;
- Southeastern Oregon Resource Management Plan Final Environmental Impact Statement (2001) and Record of Decision (2002).

Consequently, new or supplemental NEPA analysis is unnecessary. This conclusion is documented in a Determination of NEPA Adequacy (DNA) accompanying this Final Decision. The BLM's DNA worksheet process is outlined in Chapter 5 of the BLM's NEPA Handbook (H-1790-1), and is designed to help the BLM comply with NEPA, the Council on Environmental Quality's NEPA regulations (40 CFR Parts 1500-1508), and the Department of the Interior NEPA Manual.

In addition to the foregoing NEPA documents, the actions to be implemented are also consistent with the following documents, which direct and provide the framework for management of BLM-administered lands within Vale District:

- The Taylor Grazing Act (43 U.S.C. 315);
- The National Environmental Policy Act (42 U.S.C. 4320-4347);
- Greater Sage-grouse and Sagebrush-steppe Ecosystems Management Guidelines (BLM-2000);
- Federal Land Policy and Management Act (43 U.S.C. 1901);
- August 12, 1997, Standards for Rangeland Health and Guidelines for Livestock Management for Public Lands, Administered by the BLM in the States of Oregon and Washington;
- National Historic Preservation Act (16 U.S.C. 470);
- National Programmatic Agreement Among Bureau of Land Management (BLM), The Advisory Council on Historic Preservation (ACHP), and the National Conference of State Historic Preservation Officers (NCSHPO) Regarding the Manner in Which the BLM will Meet its Responsibilities Under the National Historic Preservation Act (February 2012).
- Protocol for Managing Cultural on Lands Administered by the Bureau of Land Management (BLM) in Oregon. 2015 Protocol Between Oregon-Washington State Director of BLM and Oregon State Historic Preservation Officer (SHPO).
- Executive Order 12372, Intergovernmental Review;
- BLM National Sage-grouse Habitat Conservation Strategy (2004);
- Instruction Memorandum WO-2012-043, Greater Sage-Grouse Interim Management Policies and Procedures issued December 22, 2011;

- A Report on National Greater Sage-grouse Conservation Measures, Produced by: Sage-grouse National Technical Team, December 21, 2011;
- Southeastern Oregon Resource Management Plan Settlement Agreement (Case 05-35931, June 10, 2010) between Vale District BLM and Oregon Natural Desert Association (ONDA) resulting from Ninth Circuit Court of Appeals decision (*ONDA v. BLM*, 625 F.3d 1092 (9th Cir. 2010));
- The Oregon Greater Sage-Grouse Proposed Resource Management Plan Amendment and Final Environmental Impact Statement (June, 2015); and
- The Oregon Greater Sage-Grouse Approved Resource Management Plan Amendment and Record of Decision (ARMPA, September, 2015).

FINAL DECISION

I have determined that the vegetation, soil, and other resources on the public lands are at immediate risk of erosion and other damage due to the effects of the Bendire Complex Fire. I have determined that the actions detailed below were adequately analyzed in existing NEPA documents. This conclusion is documented in the accompanying DNA review. Furthermore, implementation of these actions does not constitute a major Federal action that will adversely impact the quality of the human environment. Therefore, an Environmental Impact Statement is not necessary and will not be prepared. Based on existing NEPA analysis, comments from the public, and input from my staff, it is my final decision to implement the actions detailed below.

ACTIONS TO BE IMPLEMENTED WITH THIS DECISION

Emergency stabilization and rehabilitation actions will include:

- **Erosion Control.** Preventing hazardous road conditions would occur by installing up to 24 straw waddles in key drainages and along road where erosional forces could wash out roads making them impassible.
- **Seedings.** Seeding desirable native perennial grasses where the fire burned hottest and where there is a high potential to become infested with invasive annual grasses on approximately 7,480 acres. Aerial seeding methods would be utilized due to the steepness and rockiness of the terrain. A seed mix composed of competitive native species such as bluebunch wheatgrass and Idaho fescue was deemed necessary by the IDT due to an infestation of invasive annual grasses within the near vicinity of the intense fire. Establishment of fire resistant perennial grass species in the burned area is critical to interrupt the fire and invasive species cycle and protect adjacent sagebrush habitat.
- **Livestock Management.** Protecting the burned area from livestock grazing during a period necessary for establishment and recovery of health and vigor of desired vegetation. Approximately sixteen miles of three-strand temporary protective fence would be constructed to separate the burned area from unburned portions of affected pastures. Forty miles of existing management fence would be repaired and/or reconstructed within the affected allotments. Fence reconstruction may be as minimal as replacing H-braces and rock cribs but may be as large as full fence replacement, depending on the severity of the damage caused by the fire. In all fence reconstruction, metal materials would be used to the fullest extent

possible. Fences requiring full replacement would be reconstructed in the same location as the previous fence.

- **Planting.** Hand planting approximately 4,764 acres of sagebrush or bitterbrush seedlings in order to accelerate the recovery of these key shrub species, not only for sage grouse, but for other key wildlife such as elk and mule deer and other sage brush obligates. Seed collection and grow out will occur during year one with planting occurring during years two and three. Crab Apple planting will also occur in smaller areas where plants were present prior to the fire.
- **Cultural Resources.** Assessment and stabilization of impacted known cultural resources.
- **Effectiveness Monitoring.** Monitoring and assessing emergency stabilization treatments for success and/or failure.

RATIONALE

Implementation of the ESR treatments identified herein will protect soils in the burned area, including preventing potential loss of soil due to wind and water erosion; reduce potential invasion and establishment of noxious weeds and invasive annual grass species; prevent degradation of greater sage-grouse habitat and increase its rate of recovery. Greater Sage-Grouse is a high priority for protection within the BLM in Oregon and across the western United States.

Areas to be seeded were identified by examining the pre-fire plant communities and the burn severity. Areas where the herbaceous vegetation was influenced by invasive annuals or noxious weeds were targeted for seeding. Seeding will provide for soil stabilization and will reduce the potential invasion of greater sage-grouse habitat by invasive annual grass species and noxious weeds. Planting shrub seedlings will increase the rate of recovery for sage-grouse habitat and provide future cover and browse for other wildlife species. Seeding will also help stabilize and reduce visibility on cultural resources that were previously documented in the burned area. Seeding would likewise help meet established rangeland health standards in accordance with guidelines for livestock grazing and integrated vegetation management. The BLM will not seed areas where the pre-burn plant community was resistant to invasive species and, therefore are expected to recover without seeding.

Livestock grazing may not occur for a minimum of two growing seasons and until objectives are met. Although closure to livestock grazing and re-introduction objectives will be addressed separately through agreements or decisions, the temporary fences identified in this decision will be used in conjunction with existing fences to protect treatment areas from grazing. Protection from grazing through the use of temporary fences will allow for plants to recover from the effects of the fire. Vegetation establishment will help reduce the risk that invasive annual grasses pose to critical greater sage-grouse habitat and provide for soil stabilization.

AUTHORITY

Authority for the stabilization and rehabilitation wildfire decisions is found under 43 Code of Federal Regulations (CFR) 4190.1 Effect of wildfire management decision (a) Notwithstanding the provisions of 43 CFR 4.21(a)(1), when BLM determines that vegetation, soil or other resources on the public lands are at substantial risk of wildfire due to drought, fuels buildup, or other reasons, or at immediate risk of erosion or other damage due to wildfire, BLM may make a rangeland wildfire management decision effective immediately. Wildfire management includes but is not limited to: (1) Fuel reduction or fuel treatment such as prescribed burns and mechanical, chemical, and biological thinning methods (with or without removal of thinned materials); and, (2) Projects to stabilize and rehabilitate lands affected by wildfire.” Under these regulations, implementation of projects to stabilize and rehabilitate lands such as seeding (aerial and drilling), planting, weed treatments (aerial and ground), erosion control, road maintenance and protection, fence maintenance and reconstruction, and range improvement reconstruction will be effective upon the date of the authorized officer's signature.

This wildfire management decision is issued under 43 CFR 4190.1 and is effective immediately. The BLM has made the determination that vegetation, soil, or other resources on the public lands are at substantial risk of wildfire due to drought, fuels buildup, or other reasons, or at immediate risk of erosion or other damage due to wildfire. Thus, notwithstanding the provisions of 43 CFR 4.21(a) (1), filing a notice of appeal under 43 CFR Part 4 does not automatically suspend the effect of the decision. Appeal of this decision may be made to the Interior Board of Land Appeals in accordance with 43 CFR 4.410. The Interior Board of Land Appeals must decide an appeal of this decision within 60 days after all pleadings have been filed, and within 180 days after the appeal was filed as contained in 43 CFR 4.416.

RIGHT OF APPEAL

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4 and Form 1842-1. If an appeal is filed, your notice must be filed in the **Vale District Office, 100 Oregon Street, Vale, Oregon, 97918** within 30 days of receipt. The appellant has the burden of showing that the decision appealed is in error.

Filing an appeal does not by itself stay the effectiveness of a final BLM decision. If you wish to file a petition for a stay of the effectiveness of this decision, pursuant to 43 CFR 4.21, the petition for stay must accompany your notice of appeal. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

A petition for stay is required to show sufficient justification based on the standards listed below.

Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

1. The relative harm to the parties if the stay is granted or denied.
2. The likelihood of the appellant's success on the merits.

3. The likelihood of immediate and irreparable harm if the stay is not granted.

4. Whether or not the public interest favors granting the stay.

A notice of appeal electronically transmitted (e.g. email, facsimile, or social media) will not be accepted as an appeal. Also, a petition for stay that is electronically transmitted (e.g., email, facsimile, or social media) will not be accepted as a petition for stay. Both of these documents must be received on paper at the office address above.

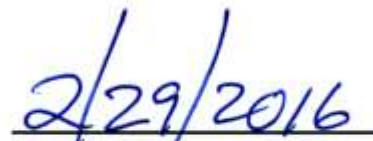
Persons named in the *Copies sent to:* sections of this decision are considered to be persons “named in the decision from which the appeal is taken.” Thus, copies of the notice of appeal and petition for a stay must also be served on these parties, in addition to any party who is named elsewhere in this decision (see 43 CFR 4.413(a) & 43 CFR 4.21(b)(3)) and the appropriate Office of the Solicitor (see 43 CFR 4.413(a), (c)) **Office of the Solicitor, US Department of the Interior, Pacific Northwest Region, 805 SW Broadway, Suite 600, Portland, Oregon 97205**, at the same time the original documents are filed with this office. For privacy reasons, if the decision is posted on the internet, the *Copies sent to:* section will be attached to a notification of internet availability and persons named in that section are also considered to be persons “named in the decision from which the appeal is taken.”

Any person named in the decision, *Copies sent to:* section of the decision, or who received a notification of internet availability that receives a copy of a petition for a stay and/or an appeal and wishes to respond, see 43 CFR 4.21(b) for procedures to follow.

This decision record and Appendix A - Response to Comments pertaining to the non-herbicide treatments, the NFESRP EA and Finding of No Significant Impact, and the Bendire Complex DNA document can be viewed at: <http://1.usa.gov/1n2c8Qg>. If you wish to receive hard copies of any of the documents listed above, please request them by calling the BLM Vale District Office at (541) 473-3144.



Thomas Patrick "Pat" Ryan
Field Manager
Malheur Field Office



Date